

# 9524.3 Policy for Rehabilitation Assistance for Levees and Other Flood Control Works

## Flood Control Works

1. **Date Signed:** September 11, 1996
2. **Response and Recovery Policy Number:** 4511.300 PO, EX
3. **Title:** Policy for Rehabilitation Assistance for Levees and Other Flood Control Works
4. **Purpose:** This policy reiterates the Federal Levee Policy promulgated as a result of the Midwest Flood of 1993; however, it does change past FEMA policy regarding the emergency repair of levees and other flood control works under authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288 as amended (Stafford Act).
5. **Scope and Audience:** This policy is intended for all Federal, State and local personnel involved in the public assistance program and/or interagency levee rehabilitation task forces. This policy is different from previous FEMA levee policy in two respects. First, it requires applicants who are eligible to participate in the U.S. Army Corps of Engineers (USACE) Levee Rehabilitation Program or the Natural Resources Conservation Service (NRCS) Emergency Watershed Protection (EWP) Program, at the time of the disaster, to join the USACE program or abide by engineering and inspection requirements of the NRCS as a condition for receiving emergency repair assistance under section 403 of the Stafford Act. Second, the policy precludes FEMA from funding emergency repairs to levees that are actively participating in the USACE program. All other provisions of the previous policy remain unchanged and, therefore, continue to be effective. The new features of this policy apply to all emergencies and disasters declared on or after the effective date above.
6. **Background:** The two Federal agencies that have primary responsibility for the repair of flood control works are the USACE and the NRCS, formerly the Soil Conservation Service. The USACE authority is contained in PL 84-99 while the NRCS authority is contained in PL 81-516 and PL 95-334. The USACE defines flood control works as "structures designed and constructed to have appreciable and dependable effects in preventing damage by irregular and unusual rises in water level." This definition includes levees, floodwalls, flood control channels, and other structures as determined by the USACE that meet the definition. The USACE does not consider structures built for channel alignment, navigation, recreation, fish and wildlife, land reclamation, interior drainage, or to protect against land erosion or saltwater intrusion to be flood control works. NRCS generally follows this definition.

The USACE requires that an applicant for assistance be an active participant in its PL 84-99 Rehabilitation and Inspection Program at the time of the disaster to be eligible for assistance. An active status means that the USACE has inspected the flood control work and accepted it into its program.

- a. If an applicant/sponsor has requested an inspection prior to the flood event, and the USACE has not inspected the flood control work, and it is damaged in the flood event, then the USACE will conduct an Initial Eligibility Inspection of the flood control work. If the USACE determines that it meets all specified engineering and maintenance criteria, then the flood control work will be placed in an active status and will be eligible for USACE rehabilitation assistance under the Rehabilitation and Inspection Program.
- b. Requirements for participation in the USACE program include: (1) it must be inspected by the USACE to ensure that the flood control work meets engineering and maintenance criteria; (2) it must have a public sponsor; and, (3) it must be regularly maintained. Additionally, the required repair work must have a benefit-cost ratio greater than one, and exceed the scope of the sponsor's maintenance responsibility.

The objective of the NRCS EWP Program is to assist in relieving imminent hazards to life and property from floods and products of erosion created by natural disasters that cause sudden impairment of a watershed. Levees and other flood control works are eligible for repair under the EWP Program when there is a potential for loss of life or property without the repairs, the benefits associated with repairing the flood control work exceed the cost of repair and other flood control work-dependent costs and the owners agree to meet NRCS eligibility requirements for engineering and maintenance.

In 1986, the USACE and NRCS signed a Memorandum of Agreement to delineate areas of responsibilities for the repair of flood control works between the two agencies. The agencies agreed that NRCS would be responsible for repairing flood control works with contributing drainage areas of less than 400 square miles and the USACE would be responsible for repairing flood control works with drainage areas of greater than 400 square miles. The agreement remains in effect. Following the 1993 Midwest Floods, the Economic Development Administration (EDA) funded on a one-time basis emergency repairs to levees that protected critical infrastructure but were not active participants in either the USACE or the NRCS program. One condition of obtaining EDA funding was that the sponsor agreed to join the USACE Rehabilitation and Inspection program after the assistance was provided. The coordination on flood control works issues among Federal agencies that was implemented at the disaster field offices during the Midwest floods will be followed, when appropriate. This is accomplished by establishing an interagency task force comprised of representatives from FEMA, USACE, NRCS, U.S. Fish

and Wildlife Service, Environmental Protection Agency and other agencies, if appropriate.

The Stafford Act includes flood control facilities (including levees) as public facilities that are eligible for assistance under the Act. When other Federal agencies have the authority to repair facilities that are also eligible under the Stafford Act, FEMA generally defers to the other Federal agencies unless there is an immediate threat to life and property. This is codified in 44 CFR 206.226(a).

7. **Policy:** The following states FEMA policy on levees and other flood control works. The policy was coordinated with the USACE and NRCS.

*ELIGIBLE:*

*Emergency Work*

1. Flood control works that are participating in the USACE PL 84-99 Rehabilitation and Inspection Program; those that are eligible to join the USACE program but are not an active participant; or those that may be eligible for assistance under the NRCS EWP program may be eligible for flood fighting activities (e.g. sand-bagging, buttressing, adding freeboard, etc.), debris removal and emergency repairs (e.g. placing fill material in breached or significantly deteriorated, weakened areas of the flood control work). For the last, however, emergency repairs to flood control works that are participating in the USACE PL 84-99 Rehabilitation and Inspection Program are ineligible. As a condition of receiving disaster assistance for emergency repairs, the applicant must agree to join the USACE program or abide by engineering and inspection requirements of the NRCS. FEMA shall limit disaster assistance for emergency repairs to flood control works on a one-time only basis. Therefore, subsequent emergency repairs to previously damaged flood control works (which include the entire levee system) would not be eligible for disaster assistance. When emergency repairs are authorized, they are limited to restoring the original elevation of the flood control work or to an elevation designed to protect against the five-year flood event, whichever is lesser. However, FEMA may provide disaster assistance for flood fighting activities and debris removal in subsequent disasters.
2. Water control structures (including earthen levees) that are ineligible to join the USACE programs or receive assistance from the NRCS may be eligible for emergency protective measures under section 403 of the Stafford Act.
3. Dewatering of areas behind levees by breaching the levees or pumping is eligible if there is a threat to health and safety or improved property; or, if required to facilitate the initiation of a Federal repair project. Deliberate breaches made by the sponsor to accomplish such dewatering are eligible for repair.

4. The costs of removal of flood fight measures on flood control works can be eligible if such removal is necessary to eliminate a health and safety threat, to operate the flood control work as a public facility or to repair the facility.

#### *Permanent Work*

Water control structures (including earthen levees) that do not meet the USACE or NRCS definition of a flood control work and are owned by an eligible applicant may be eligible for assistance from FEMA. Examples of eligible structures include those built for channel alignment, land reclamation, drainage and erosion control. Eligible work will be to restore the structure to predisaster condition in accordance with 44 CFR part 206. The structure must be an actively used and adequately maintained facility.

#### *INELIGIBLE*

5. Permanent repairs of flood control works that are eligible to join the USACE PL 84-99 Rehabilitation and Inspection Program, whether or not they are active participants in the program, are ineligible.
6. Emergency repairs to flood control works that are participating in the USACE PL 84-99 Rehabilitation and Inspection Program are ineligible.
7. Subsequent emergency repairs to previously damaged flood control works (which include the entire levee system) are ineligible.
8. Damages to eligible flood control works that do not meet the USACE PL 84-99 Rehabilitation and Inspection Program minimum threshold amount for permanent repair are ineligible for FEMA funding.
9. Damages that do not meet the criteria for funding for permanent repair under the NRCS EWP Program are ineligible for FEMA funding.
10. Dewatering areas behind levees for the primary purpose of drying the land is ineligible.
11. Secondary levees riverward of the primary levees are ineligible for repair unless they protect human life.
12. Increasing the height of flood control works is ineligible.

**KEY WORDS:** Levees, flood control works, USACE, NRCS

8. **Supersession:** This policy supersedes the following memoranda: Memorandum dated August 26, 1993 to Federal Coordination Officers for Midwest Flood Disasters from Richard W. Krimm, Deputy Associate Director, State and Local Programs Support, subject: Federal Levee Repair; Memorandum dated October 1, 1993 to Disaster Recovery Managers and Public Assistance Officers for all Midwest Floods from Richard W. Krimm, Deputy Associate Director, State and Local Programs Support, subject: Interagency Coordination and Review of Levee

Repair Projects; Memorandum dated November 23, 1993 to Regional Directors from Laurence Zensinger, Chief, Public Assistance Division, subject: Restatement of Federal Levee Policy; all other previous memoranda on this subject.

9. **Authorities:** Sections 102, 403, 406, 407, and 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288 as amended and the implementing regulations at 44 CFR part 206.
10. **Originating Office:** Infrastructure Division, Response and Recovery Directorate
11. **Review Date:** September 1998
12. **Signature:**

*signed*

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